D.B. SPECIAL APPEAL (WRIT) NO.364/2006

Juglal & Anr. **Vs.** Board of Revenue, Ajmer & Ors.

Date : 25.07.2006

PRESENT

HON'BLE MR. JUSTICE RAJESH BALIA
HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. J.R. Beniwal) for the appellant.
Mr. Suneel Beniwal)

Having heard learned counsel for the appellant we do not find any merit in this appeal and we are in agreement with the learned Single Judge. The trial court and the Revenue Appellate Authority have arrived at finding by ignoring the evidence of Smt. Birma widow of Harphool about paternity of two girls namely Sumitra and Roshni that they were daughters of deceased Harphool through Birma. It is alleged that Mst. Birma had gone in nata with Molad Ram during the life time of Harphool. However, the question raised in the suit is whether at the time of death of Harphool, he had left behind heirs of class I, who could succeed to his interest in the agricultural land. Defendants in the suit are the brothers of the deceased Harphool.

Apparently, it was contended in the claim laid

by three women to claim their right against two male members of the family, who are definite intereste in the absence of the male descendant of Harphool to take the land for themselves when they found that widow has already gone in Nata with Molad Ram. The succession opens at the time when the holder of the estate dies and there is no hiatus in vesting of that interest in heirs of deceased. The vesting takes place as soon as death takes place. The heirs' existing at the time of death cannot be denied inheritance on the ground of subsequent events. Assuming at best that widow had contacted Nata marriage during the life time of Harphool by leaving him as per customary divorce, the estate belonging to her deceased husband must vest in her children irrespective of gender. It is only if Harphool had died issueless the question of brother who belong to class II heir only as per personal law succeeding in estate of Harphool will arise. In this case very cogent evidence of mother about paternity of two daughters had been ignored by two lower courts, hence, finding recorded by them about paternity of two daughters stood vitiated. Hence, Broad was within the scope of its jurisdiction to

arrive at its own finding as to the fact whether the two plaintiffs were daughters of Harphool and succeeded to his estate as Class I heirs.

That is the only question argued in this appeal.

The appeal is hereby dismissed.

[GOPAL KRISHAN VYAS], J. [RAJESH BALIA], J.

babulal/